



Cases, Notes and Materials on COMMERCIAL AND CONSUMER TRANSACTIONS

VOLUME I

Edited by

JACOB S. ZIEGEL

Professor of Law
University of Toronto

BENJAMIN GEVA

and

Assistant Professor of Law
Osgoode Hall Law School

Provisional Edition

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UNIVERSITY OF TORONTO

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PREFACE

This Casebook is the successor to the Casebook on Commercial and Consumer Transactions that previously appeared under my own name. The casebook was badly in need of revision and I was fortunate to be able to persuade Professor Benjamin Geva of the Osgoode Hall Law School to join me in the task of updating it.

The present version of the casebook differs in important respects from its predecessor. Almost every chapter has been revised in some respect; obsolete or protix materials have been pruned or eliminated altogether; and more recent cases and other materials have been added either because of their pedagogical value or because they illustrate important legislative or doctrinal developments. In addition, the contents and sequence of several of the sales chapters have been rearranged in the interests, hopefully, of a more logical treatment of the subject. The Report of the Ontario Law Reform Commission on Sale of Goods was published while we were in the midst of revising the casebook. We have made as much use of it as was possible in the time at our disposal, but a more comprehensive mining of its contents will have to await a future edition.

The most important changes in the present edition are those involving the chapters on the payment mechanism, the law of secured transactions (personal property security), and consumer credit. The chapters on the payment mechanism are substantially new and reflect our belief that every commercial law student should have some understanding of the basic concepts of negotiable instruments and those aspects of the banking system related to the payment mechanism. The chapters on secured transactions and consumer credit have been entirely revised and substantially enlarged so as better to reflect the legal and economic importance of these branches of commercial and consumer law.

Despite the many changes, we hasten firmly to renounce any claim to finality or exhaustiveness. We have emphasized the interim character of the present revision by calling it a provisional edition. The casebook has been designed to accommodate a four hour semester course but can, we believe, be readily adjusted to meet the needs of a shorter course.

It remains for me to acknowledge the deep indebtedness of Professor Geva and myself to several persons without whose assistance the casebook could not have been published in time. George Davitt, a second year law student at the University of Toronto, carried almost all of the burden of revising the volume of Statutory Materials and also helped me very greatly and most intelligently with those chapters of the casebook for which I was primarily responsible. Chris Piersanti and Ken Chalmers, two third year Osgoode Hall students, admirably performed the same functions with respect to the chapters for which Professor Geva was primarily responsible. Miss Angela D'Ambrosi and Miss Janice Magee, our respective secretaries applied their exemplary typing skills. Finally but not least, we acknowledge gratefully our appreciation to Mrs. Betty Laverty and Mr. Timothy Lee, both of Osgoode, for agreeing so readily to look after the actual mechanics of publication and distribution.

J.S.Z.

August 1979

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TABLE OF ABBREVIATIONS

Treatises and Reports

ATIYAH	The Sale of Goods, 5th ed. (1975)
BENJAMIN	Benjamin's Sale of Goods, 1st ed., 1974 (A.G. Guest, ed.)
BOGERT, BRITTON & HAWKLAND	Cases and Materials on Sales and Security, 4th ed.
BOULTON	The Making of Business Contracts, 2nd ed. (1972)
CCH CANADIAN	Canadian Sales & Credit Law Guide (loose leaf, 2 vols.)
CCH (U.S.)	Instalment Credit Guide (loose leaf, 2 vols.)
CROWTHER	Report of the Committee on Consumer Credit (London, 1971)
FALCONBRIDGE	Banking & Bills of Exchange, 7th ed. (1969)
FRIDMAN	Sale of Goods in Canada, 2nd ed. (1979)
GOODE & ZIEGEL	Hire-Purchase and Conditional Sale: A Comparative Study (1965)
HONNOLD	Cases and Materials on Sales and Sales Financing, 3rd ed. (1968)
NEILSON	Consumer and the Law in Canada (1970)
OLRC WARRANTIES REPORT	Ontario Law Reform Commission, Report on Consumer Warranties and Guarantees (August 1972)
OLRC SALES REPORT	Ontario Law Reform Commission, Report on Sale of Goods (1979, 3 vols.)
SUTTON	The Law of Sale of Goods in Australia and New Zealand, 2nd ed. (1974)
ULA	Uniform Laws Annotated, 2nd ed. (1971) Uniform Commercial Code, Master Edition, and Annual Supp.
WILLISTON	Williston on Sales (Revised ed., 4 vols.)
ZIEGEL & FOSTER	Aspects of Comparative Commercial Law (Montreal, 1969)

(N.B. The above volumes will be kept on reserve)

Statutes

B.P.A.	Business Practices Act, 1974 (Ont.)
B.o.E.	Bills of Exchange Act (Can.), as amended
B.o.S.	Bills of Sale Act, R.S.O. 1970, c. 44, as am.
Bill 110	The Consumer Products Warranties Act, 1976 (Ont.)
C.I.A.	Combines Investigation Act (Can.), as amended 1975
C.P.A.	Consumer Protection Act, R.S.O. 1970, c. 82 as am.
C.S.A.	Conditional Sales Act, R.S.O. 1970, as am. (now repealed)
Factors Act	R.S.O. 1970, c. 156
P.P.S.A.	Personal Property Security Act, R.S.O. 1970, c. 344, as am.
S.G.A.	Sale of Goods Act, R.S.O. 1970, c. 421
U.C.C.	Uniform Commercial Code (1972 Official Text)
U.C.C.C.	Uniform Consumer Credit Code (U.S.)
U.P.P.S.A.	Model Uniform Personal Property Security Act (Can.)

SALE OF GOODS

Differences between U.K. Act and Ontario Act*

<u>U.K.</u>	<u>Ontario</u>
Sec. 1 Definition of Sale	Sec. 2
2 Capacity	Sec. 3
3 Formation of Contract	Sec. 4
4 "Stat. of Frauds Section" — has now been repealed	Sec. 5 \$40 substituted for b10
5-21	Sec. 6-22
22 Sales in Market Overt	Sec. 23 excludes English rule
23 Voidable title	Sec. 24
24 Revesting of Property in stolen goods	OMITTED
25 Seller or buyer in possession	Sec. 25
26 Effect of Writs of Execution	OMITTED
27-39	Sec. 26-37
40 Attachment by Seller in Scot- land	OMITTED
41-58	Sec. 39-56
59 Scottish law	OMITTED
60 Repeals	OMITTED
61(1) Bankruptcy rules	OMITTED
62 Definitions	Sec. 1

* The references are to the original U.K. Act. Subsequent changes in the British Act, particularly those introduced by the Supply of Goods (Implied Terms) Act, 1973 and The Unfair Contract Terms Act, 1977, are not included.

